***THE HON'BLE Ms. JUSTICE G. ROHINI**

+WRIT PETITION NO.5500 OF 2001

% 03/10/2005

1. Surya Prakasa Rao and 2 others. … Petitioners

Vs.

$

1. Govt. of A.P., Revenue (Excise) Dept.,
Secretariat, Hyderabad, rep. by its Principal
Secretary and others. … Respondents

< Gist

> Head Note:

! Counsel for the Petitioners : Sri O.Manohar Reddy

^ Counsel for the respondents : Govt. Pleader for Proh. & Excise

Cases referred :

- NIL -

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.5500 OF 2001

Dated: 03rd October, 2005.

Between:

1. Surya Prakasa Rao and 2 others. … Petitioners

And

2. Govt. of A.P., Revenue (Excise) Dept., Secretariat, Hyderabad, rep. by its Principal Secretary and others. … Respondents

-

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.5500 OF 2001

ORDER :

The 1st petitioner herein was granted licence in Form IL-24 to sell Indian Liquor at Tenali for the Excise Year 2000-01. In pursuance thereof, though he started business in the name and style of M/s. Sri Krishna Wines, due to certain problems he was unable to continue the business and therefore he made an application dated 21-3-2001 requesting the third respondent – Prohibition & Excise Superintendent, Guntur to transfer the licence in favour of the petitioners 2 and 3 under Rule 38 of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short, 'the Rules). He also paid the required fee of Rs.12,000/-. However, the 4th respondent – Prohibition & Excise Inspector, Tenali by Proceedings dated 25-3-2001 informed the 1st petitioner that he is required to remit a sum of Rs.72,000/- towards licence fees but not Rs.12,000/- and accordingly directed him to pay the balance amount of Rs.60,000/- as per Rule 38 (2) of the Rules. It appears that the said proceedings were issued on the basis of a clarification by the 2nd respondent – Commissioner of Prohibition & Excise dated 22-2-2001 stating that 10% of licence fees is leviable for transfer of licence. Hence, this writ petition seeking a declaration that the proceedings of the

2nd respondent dated 22-2-2001 as well as the order of the 4th respondent dated 25-3-2001as arbitrary and illegal and for a consequential direction to transfer the licence of the 1st petitioner in favour of the petitioners 2 and 3.

In the counter-affidavit filed by the Prohibition & Excise Superintendent, Guntur, on behalf of the respondents, it is stated that the fee chargeable for grant or renewal or continuance of a licence shall be full annual licence fee and therefore the impugned proceedings directing the 1st petitioner to pay a further sum of Rs.60,000/- is in accordance with law. It is also stated that the 2nd respondent issued a clarification dated 22-2-2001 stating that 10% of the fee for transfer of licence is leviable on the annual licence fee of the shop.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is relevant to note Rule 38 of the Rules which deals with transfer of the licence.

> ***"38. Licensee not to transfer the licence without authority:-***
>
> *(1) No licensee shall except with the sanction of the Commissioner transfer his licence to any other person. The Commissioner may allow such transfer of licence on payment of the prescribed fee and on production of a certificate to the affect that no cases involving contravention of Excise Act and Rules framed thereunder are pending against him and also on production of Sales Tax and Income Tax Clearance Certificates :*
>
> *Provided that instead of permitting a licence to be transferred, the Commissioner may require the transferee to take out a fresh licence on payment of fees.*
>
> *(2) The fee payable by any licensee for the privilege of having the transfer of his licence to any other person shall be 10% of the fee chargeable for grant or renewal or continuance of such licence..*
>
> *(3) … … … … … … …*
>
> *(4) … … … … … … …*
>
> *(5) … … … … … … …"*

A plain reading of Sub-rules (1) and (2) of Rule 38 of the Rules shows that the

transfer of a licence is permissible only with the prior sanction of the Commissioner on payment of the prescribed fee and on complying with the other conditions mentioned in Sub-rule (1) of Rule 38 of the Rules. Sub-rule (2) specifically provides that the fee payable shall be 10% of the fee chargeable for grant or renewal or continuance of such licence.

The licence fee payable in respect of different licences for sale of Indian Liquor & Foreign Liquor has been specified under Rule 25 of the Rules. So far as the licence in Form IL-24 is concerned, Sub-rule (9) of Rule 25 states that it shall be at the rates as shown in the schedule appended to the Rules. It is relevant to note that under Sub-rule (9), so far as the licences issued before the commencement of the lease year are concerned, the licensees were granted liberty to pay the annual licence fee either in one lumpsum or in three equal instalments or in a manner as notified from time to time. That apart, the proviso to Sub-rule (9) specifies the scale of annual licence fee in respect of licences granted during the lease year as under :

a. *Licences other than occasional or special licences Full annual licence fee granted between 1st April and 31st May.*

b. *Licences other than occasional or special licences Five sixth of the annual Granted between the 1st June and 31st July. Licence fee.*

c. *Licences other than occasional or special licences Two third of the annual granted between the 1st August and 30th September licence fee*

d. *Licences other than occasional or special licences One half of the annual Granted between the 1st October and 30th November licence fee*

e. *Licences other than occasional or special licences One third of the annual granted between the 1st December and 31st January licence fee*

f. *Licences other than occasional or special licences One sixth of the annual granted between the 1st February and 31st March licence fee*

The learned Counsel for the writ petitioner contends that the fee payable under Sub-

rule (2) of Rule 38 for transfer of the licence shall be 10% of the fees specified under the scale provided under the proviso to Sub-rule (9) of Rule 25. Since the transfer of licence was ordered on 25-03-2001 i.e., between 1st February and 31st March, according to the learned Counsel for the petitioner, Clause (f) of the proviso to Rule 25 (9) is attracted and therefore the petitioner is required to pay 10% of 1/6th of the annual licence fee. Thus, the learned Counsel contends that the sum of Rs.12,000/- paid by the 1st petitioner is sufficient and the impugned action of the respondents in insisting on payment of a further sum of Rs.60,000/- is arbitrary and illegal.

Having regard to the provisions under Rule 25 (9) and Rule 38 of the Rules, extracted above, I do not find any substance in the contention of the learned Counsel for the petitioner.

As noted above, Rule 25 provides for annual licence fee for different licences for sale of Indian Liquor and Foreign Liquor. So far as the licences in Form IL-24 (Retail Licences) are concerned, if the same are granted during the lease year, under the proviso to Sub-rule (9) of Rule 25 the annual licence fees has been proportionately reduced as specified thereunder in the scale, depending on the date on which the licence is granted. However, there is absolutely no justifiable reason to apply the said scale to the fees payable under Sub-rule (2) of Rule 38 for transfer of the licence. Sub-rule (2) of Rule 38 in clear terms provided that the fee payable by the licensee for the privilege of having the transfer of his licence shall be 10% of the fee chargeable. Though the said Rule does not specify that it shall be the annual licence fees, by no stretch of imagination, it can be presumed that the fee payable for transfer of licence shall be the 10% of the fee specified in the scale under Rule 25 (9) of the Rules. Rule 25 and Rule 38 are independent provisions which provide for different circumstances and they are not interconnected in any manner whatsoever. In the absence of any other provision which either expressly or by necessary implication makes the scale under the proviso to Rule 25 (9) applicable to Rule 38 (2), I am unable to hold that the fees payable by a licensee for the privilege of having the transfer of his licence to any other person shall be 10% of the fees chargeable under the proviso to Rule 25 (9) of the Rules.

For the aforesaid reasons, the impugned action of the respondents which is in accordance with the statutory provisions does not warrant any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

_____

03rd October, 2005.

Note:- LR copy to be marked.

(B/O)

gbs